No. 93-358

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

C. MICHAEL JONES, et al.,
Petitioners,

vs.

CATERPILLAR INC.,
Respondent.

Petition for Writ of Certiorari to the
Appellate Court of Illinois, Fourth District

PETITION FOR WRIT OF CERTIORARI

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54 pp

QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois erred in determining that plaintiffs' state-law claims, based upon apprenticeship agreements, were, because of Caterpillar's affirmative defenses, substantially dependent upon interpretation of a collective bargaining agreement, and therefore preempted under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a).

LISTING OF ALL PARTIES

Plaintiffs: C. Michael Jones, Floyd Allsop, Randall Carbonneau, Michael Carr, Jared Carroll, Roger Damery, Larry Day, Gerald Dunaway, David Ellington, Donald Fliegle, Michael Flemming, Mablean Fullenwider, John Gepford, Darrell Hartnell, Stephen Hartwig, Douglas Hays, Brian Hoff, Rodney Karr, J. Michael Killam, Michael Lingenfelter, Gary Mackling, Anthony Mense, Dana Miller, Stephen Morgan, Larry Oltmann, Michael Oxby, Michael Patton, Nathaniel Pigee, Leonard D. Pryczynski, Danny Ragan, Ivan Roe, Jr., Dennis Ross, Michael Short, Ronald Sifford, Donald Smith, Marion Smith, Nelson Snow, Kenneth Snyder, Terry Sphar, Darrell Thompson, Darrell Virden, Michael Wisdon, Robert Yard, Daniel Boomer, Dale Elvers, Stanten A. Adcock, Douglas Albright, Robert L. Albright, Steven M. Aldus, Edward S. Allmon, Scott L. Barnes, Paul E. Bishop, Karen S. Boker, John A. Bonwell, William S. Brannan, Jackie D. Brasher, Donald T. Bratt, Ronald D. Bray, Allen Callahan, Ricky Capelle, Patrick A. Cebuhar, William R. Chapman, Daniel Christianson, Denis E. Cole, John D. Cole, Jerry W. Cornelison, Dennis W. Davison, James Derry, David B. Diveley, Ray H. Eddy, Steven E. Engstrom, Bret Epkins, James N. Fagerburg, Roger A. Fardel, Michael A. Fletcher, Kim Fluegel, Howard W. Fowler, Margaret A. Freeman, Judd P. Gaffney, David Good, Wendell Good, Alan Gray, Gregory A. Gruber, John A. Grider, Gary Guth, William D. Hancock, Karen E. Harlan, Michael E. Hasty, Jeffrey S. Heaton, Gary L. Hendryx, Thomas W. Herrick, Terry Joe Hierman, Calvin Hightower, Keith C. Hollaway, Lance

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Defendant: Caterpillar Inc.

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No.

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OPINION IN THE CASE

Jones, et al. v. Caterpillar Tractor Company,
241 Ill.App.3d 129, 607
N.E.2d 1348 (4th Dist. 1993)

GROUNDS FOR JURISDICTION

i) The opinion sought to be reviewed was issued by the Appellate Court of Illinois, Fourth District, on February 4, 1993. The Illinois Supreme Court denied leave to appeal on June 3, 1993.

ii) No rehearing was sought. No extension of time was sought for filing this Petition.

iii) Jurisdiction for review by this Court is conferred by 28 U.S.C. §1257(a).

STATUTE INVOLVED

Labor Management Relations Act of 1947, Section 301(a), 29 U.S.C. Sec. 185(a):

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

Factual Background

Plaintiffs are 165 individuals who enrolled in Caterpillar's apprentice training program, generally during the period 1978-1982, and who were terminated from the program during subsequent company layoffs. Caterpillar and each plaintiff entered into an Apprenticeship Agreement (AA) for either a two or four-year term. An example of an AA is appended to this Petition (App. H, A-34). The training program covered a range of occupations, such as toolmaker, electrician, welder, machinist, and called for several thousand hours of classroom and shop instruction. After teaching a trade, Caterpillar would award a diploma and, to the extent of available openings, offer job placement. In paragraph 9 of the AA, Caterpillar agreed to instruct each apprentice "in the trade during the entire training period" (A-36).

The AAs were prepared by Caterpillar (R.C 1814). They make no reference to any collective bargaining or other agreement, other than to set "wages according to the current applicable schedule of rates" (A-35).

Paragraph 7 of the AA provides for separation from the training program "for failure to maintain the standards of the course," and lists examples of such failures (A-36). No other reasons for separation are stated. The AA makes no mention of layoffs. Apprentices were told that they could be separated only for poor attitude or performance (R.C 4292-94). Apprentices were not told that they could be dropped from the program as part of a company layoff (R.C 4273, 4255-56). That plaintiffs were terminated for economic reasons, and not for unsatisfactory performance, is not disputed (R.C 896, 942).

Procedural Background, and Appearance of Federal Question

Suit herein was filed on January 6, 1986, setting forth the parties' executions of the AAs, the subsequent terminations by Caterpillar, and plaintiffs' prayers for damages (R.C 1). On 2/11/86, Caterpillar filed a petition to remove the case to the U.S. District Court for the Central District of Illinois (R.C 224), and, on 2/18/86, filed a motion to dismiss and/or for summary judgment alleging preemption of plaintiffs' state-law claims by federal labor law, specifically Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (R.C 234). On 3/4/86, plaintiffs moved to remand, taking issue with Caterpillar's claim of preemption (R.C 345). In view of this Court's decision in *Caterpillar Inc. v. Williams*, 482 U.S. 386, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987), the District Court, on 8/6/87, ordered the cause remanded to state court (App. D, A-17). In the trial court, Caterpillar filed its Answer on 8/20/87, including an affirmative defense of preemption (R.C 779, 884).

On 10/19/87, plaintiffs moved for summary judgment (R.C 914). Caterpillar cross-moved on 4/3/89, again asserting preemption (R.C 971-2). On 7/18/89, the trial court entered an order denying both motions, and stating:

> "The apprenticeship agreements were not 'subsumed' into the collective bargaining agreements, and therefore were not preempted by Section 301 of the Labor Management Relations Act." (App. E, A-22)

On 7/25/89, the trial court granted plaintiffs leave to file their First Amended Complaint, which included causes of action for both breach of contract (the AA) and misrepresentation (R.C 1891, 1892). On 9/22/89, Caterpillar answered (R.C 2182), reiterating its previously asserted preemption defense (R.C 2406). On 10/30/89, the trial court ordered joinder of additional plaintiffs (bringing the total to 165) and the filing of plaintiffs' Supplement to Amended Complaint (R.C 2436, 2438). In its further Answer and defenses, Caterpillar again asserted preemption (R.C 3362, 3384).

On 12/9/91, Caterpillar filed a renewed motion for summary judgment, again asserting preemption, and citing *Schacht v. Caterpillar Inc.*, 213 Ill.App.3d 169, 571 N.E.2d 1215 (3d Dist. 1991), *appeal denied*, 141 Ill.2d 560, 580 N.E.2d 134 (1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1306, 117 L.Ed.2d 527 (1992) (Apps. F and G, A-23 and A-32), another Illinois action involving claims of Caterpillar apprentices premised upon AAs similar to those at bar. On 4/16/92, the trial court herein entered summary judgment in favor of Caterpillar, citing the *Schacht* holding (App. C, A-16). The Appellate Court of Illinois affirmed on 2/4/93, and the Illinois Supreme Court declined review (Apps. A and B, A-1 and A-15). Plaintiffs now seek review by the Supreme Court of the United States.

REASONS FOR ALLOWANCE OF WRIT

THE APPELLATE COURT OF ILLINOIS ERRED IN BASING PREEMPTION UPON CATERPILLAR'S DEFENSES WHEN THE RIGHTS ASSERTED BY PLAINTIFFS AROSE INDEPENDENTLY OF ANY COLLECTIVE BARGAINING AGREEMENT

This Court is again asked to address the question of whether federal preemption, under §301(a) of the Labor Management Relations Act, can be found to arise from defenses raised in an employer's pleadings, where the plaintiffs' claims are premised solely upon state law. This question is reflected in opposing views as to the applicability of this Court's opinion in *Caterpillar Inc. v. Williams*, 482 U.S. 386, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987). As noted previously by members of this Court, the Circuit Courts of Appeal are in conflict. *Schacht v. Caterpillar Inc., cert. denied*, ___ U.S. ___, 112 S.Ct. 1306, 117 L.Ed.2d 527 (1992)(dissent from denial of *cert.*) (App. G, A-32).

Section 301(a) covers only "contracts between an employer and a labor organization" and, as observed by this Court, "says nothing about the content or validity of individual employment contracts." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987), reiterated in *Lingle v. Norge Division of Magic Chef*, 486 U.S. 399, 108 S. Ct. 1877, 1884n.10, 100 L.Ed.2d 410 (1988). "The preemption of state law engendered by section 301 is only occasioned when the claim raised 'on the face of the complaint' substantially depends on interpretation of a collective bargaining agreement for its resolution." *Berda v. CBS Inc.*, 881 F.2d 20, 24 (3d Cir. 1989), *cert. denied*, 493 U.S. 1062, 110 S. Ct. 879, 107 L.Ed.2d 962 (1990). See also *Williams, supra*, 482 U.S. at 394. That the plaintiffs in the case at bar were union members and covered by a collective bargaining agreement in certain aspects of their employment is not in dispute. Rather, the question is whether the apprenticeship

agreements created separately compensable rights and enforceable obligations in addition to and apart from any rights and obligations set forth in the collective bargaining agreement.

The Appellate Court of Illinois concluded that the petitioners' claims required interpretation of a collective bargaining agreement and were therefore preempted under Sec. 301(a) of the Labor Management Relations Act. 607 N.E.2d at 1352. The Court noted that the collective bargaining agreement was not asserted by plaintiffs in support of their claims. 607 N.E.2d at 1353. The Court held, however, that because Caterpillar had raised the layoff provisions of the collective bargaining agreement as a defense to petitioners' claims, interpretation of the collective bargaining agreement was required, thereby preempting those claims. 607 N.E.2d at 1354. We submit that the Appellate Court of Illinois erroneously applied the rules of preemption, having placed undue focus upon Caterpillar's purported defenses.

Although acknowledging the test of substantial dependence, the Appellate Court did not, in either *Schacht* or the present case, identify any specific provisions of a collective bargaining agreement upon which the AA depended[1]. The Appellate Court agreed that this action was not premised upon any right conferred by a collective bargaining agreement. The Court concluded, how-

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[1] For example, the Court stated:

> "Yet, in determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined. This will require an interpretation of the collective-bargaining agreement which is governed by Federal law and preempted by section 301(a)". 607 N.E.2d at 1354 (A-10).

The Court, though, never explained the need to interpret the collective bargaining agreement to determine whether Caterpillar breached its apprenticeship contracts with petitioners.

ever, that the claims were preempted as a result of Caterpillar's assertion of the layoff provisions of the collective bargaining agreement as an affirmative defense, and thus the need to interpret those provisions. Arguably, though, under this view, a defendant in any action, brought by a plaintiff who happens to be a union member, could simply raise the specter of a collective bargaining agreement and thereby claim preemption.

In *Williams*, this Court observed that a state-law claim to enforce a collective bargaining agreement would be preempted by Section 301(a). 482 U.S. at 394. The Court held, though, that the plaintiffs' claims for breach of separate employment agreements were neither claims to enforce a collective bargaining agreement, nor claims that were substantially dependent upon interpretation of any collective bargaining agreement. This was despite the fact that as hourly workers the plaintiffs had had certain rights under a collective bargaining agreement. 482 U.S. at 394-95. The Court observed:

> "Section 301 does not, as Caterpillar suggests, require that all 'employment-related matters involving unionized employees' be resolved through collective bargaining and thus be governed by a federal common law created by [Sec.] 301...The Court has stated that 'not every dispute concerning employment, or tangentially involving a provision of a collective bargaining agreement is preempted by [Sec.] 301 or other provisions of the federal labor law.' "

482 U.S. at 396 n.10, citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S. Ct. 1904, 85 L.Ed.2d 206 (1985).

The Appellate Court of Illinois has, we submit, erroneously relegated *Williams* to a discussion of removal jurisdiction, despite the clear statement by this Court that the *Williams* contract claims were not dependent upon interpretation of a collective bargaining agreement. As noted in the dissent to the denial of *certiorari* in *Schacht*, the interpretation and scope of

Williams is a matter of dispute among the Circuit Courts of Appeal. E.g., *Berda v. CBS Inc.*, 881 F.2d 20 (3d Cir. 1989), *cert. denied*, 493 U.S. 1062, 110 S. Ct. 879, 107 L.Ed.2d 962 (1990) (citing *Williams* as to merits of employer's preemption defense) and *Smith v. Colgate-Palmolive Company*, 943 F.2d 764 (7th Cir. 1991)(distinguishing *Williams* as removal case). Subsequent to the Illinois holding in *Schacht*, at least two other U.S. Circuit Courts of Appeal have cited *Williams* on the merits of preemption arguments. *Lopez v. Continental Can Company*, 961 F.2d 147 (9th Cir. 1992)(fraud claim against employer not preempted), and *White v. National Steel Corp.*, 938 F.2d 474 (4th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S. Ct. 454, 116 L.Ed.2d 471 (claims on contracts with individual employees did not arise from or require interpretation of collective bargaining agreement).

In *White*, the plaintiffs had been promoted to management positions from jobs covered by a collective bargaining agreement, all with oral assurances of job security and continued seniority. Despite the alleged oral promises, plaintiffs were laid off. 938 F.2d at 478. Plaintiffs brought suit and National Steel asserted preemption under Section 301(a). The District Court ruled generally in favor of the plaintiffs. Noting the similarity between the facts before it and those in *Williams*, and the principles of preemption as discussed in *Williams*, the Court of Appeals in *White* held that the plaintiffs' state-law contract and fraud claims were not preempted by Section 301(a) or other provisions of federal labor law. Said the Court:

> "It is clear that plaintiffs are not relying on duties or promises contained in any collective bargaining agreements . . . The promises plaintiffs seek to enforce are those that National made to them in negotiations over the terms of employment in management positions...Plaintiffs' individual employment contracts are the foundation of their asserted rights . . . 'Section 301 says nothing about the

> content or validity of individual employment contracts.' [citing *Williams*] It is those contracts, not the collective bargaining agreements, that must be interpreted."

938 F.2d 483. The Court went on to state that even if a collective bargaining agreement would preclude specific enforcement, such as job reinstatement, the plaintiffs were "still free to bring damages claims against their employer for breach of contract." 938 F.2d at 485.

It is under the preemption principles set forth in *Williams*, and applied in *White*, that the petitioners at bar seek damages from Caterpillar for breach of their apprenticeship agreements. The erroneous application of federal preemption by the Illinois Courts, despite the principles announced by this Court in cases such as *Williams*, has curtailed these petitioners' pursuit of purely state-law rights and remedies. We submit that this Court should now step in to clarify both the scope of *Williams* and the limitations, if any, on federal preemption in cases such as this, i.e., where the matter of a collective bargaining agreement is raised solely as a defense to an otherwise purely state-law claim.

CONCLUSION

Petitioners respectfully urge this Court to grant a writ of *certiorari* to review the judgment of the Appellate Court of Illinois. This Court's review, and clarification of preemption principles, are not only crucial to the present litigants, but are of importance as well to others affected by collective bargaining and to the various federal and state courts faced with preemption defenses.

Respectfully submitted,

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APPENDIX

APPENDIX A

NO. 4-92-0408

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

C. MICHAEL JONES, et al.,
Plaintiffs-Appellants,

v.

CATERPILLAR TRACTOR COMPANY,
a California Corporation,
Defendant-Appellee.

Appeal from Circuit Court of Sangamon County

No. 86L4

Honorable Jeanne E. Scott,
Judge Presiding.

[Filed: Feb. 4, 1993]

JUSTICE LUND delivered the opinion of the court:

Plaintiffs filed a complaint against defendant Caterpillar Tractor Company (defendant), for allegedly violating certain terms of their apprenticeship agreements and for misrepresentation. The trial court granted summary judgment for defendant on the basis of *Schacht v. Caterpillar, Inc.* (1991), 213 Ill. App. 3d 169, 571 N.E.2d 1215, *appeal denied* (1991), 141 Ill. 2d 560, 580 N.E.2d 134, *cert. denied* (1992), __ U.S. __, 117 L. Ed. 2d 644, 112 S. Ct. 1506. Plaintiffs appeal this award of summary judgment. We affirm.

Plaintiffs are former and present employees of defendant. At various times between 1978 and 1982, each plaintiff entered into defendant's apprentice training program. The terms of the apprenticeships were set forth in a standardized apprenticeship

agreement entered into between each individual employee and defendant. Among its provisions, the agreements provided that the trainee would receive wages according to the current applicable schedule of rates contained in the collective-bargaining agreement, and defendant would teach and instruct plaintiffs for the entire training period specified in the agreement. Of particular importance to this case was an additional provision which provided:

> "[Defendant] reserves the right to separate the TRAINEE from the Training Course for failure to maintain the standards of the course including but not limited to: unsatisfactory work, inability to acquire the necessary knowledge for graduation, improper conduct, indifferences to factory rules and regulations, insubordination, or any other justifiable reason."

Upon completion of the training program, the agreement specified that defendant intended to offer the trainee job placement. The type of placement would depend upon the openings available, the ability and progress displayed during training, and the graduate's desires.

In the early 1980's, defendant experienced economic difficulties and in response laid off employees pursuant to the layoff and seniority provisions in the central collective-bargaining agreement and related provisions of the local agreements. Plaintiffs were terminated at various times from the training program during these layoffs.

During the layoffs, defendant and the union had two collective-bargaining agreements in effect. The first was effective December 15, 1979, and its successor was effective April 19, 1983. Each plaintiff during their employment was a member of a collective-bargaining unit represented by the International Union, United Automobile, Aerospace, and Agricultural Workers of America, Local 751 (Union). While serving as appren-

tices, plaintiffs continued to hold membership in the union and to pay union dues.

In response to the layoffs, 45 of the laid-off apprentices filed an action in State court against defendant for common law breach of contract. The complaint consisted of 45 counts, one for each plaintiff, alleging defendant breached their apprenticeship agreements by failing and refusing to employ them as apprentices and by failing and refusing to provide them training or allow them to complete the training program. Defendant subsequently petitioned to remove the action to the United States District Court. It contended that plaintiffs' terms and conditions of employment, including removal and termination from the apprenticeship program, were governed by the collective-bargaining agreement and that the apprenticeship agreements were subsumed by it. Therefore, the action was preempted under section 301(a) of the Labor Management Relations Act, 1947 (LMRA) (29 U.S.C. §185(a) (1988)) and was within the exclusive jurisdiction of the Federal courts.

Plaintiffs moved to remand the action. They argued that their apprenticeship agreements were separate and independent of any collective-bargaining agreement, and, therefore, their claims were not preempted. The Federal district court ordered the action remanded to the State court based on the authority of *Caterpillar, Inc. v. Williams* (1987), 482 U.S. 386, 96 L. Ed. 2d 318, 107 S. Ct. 2425. It found that plaintiffs' State-law claims for breach of the individual apprenticeship contracts did not implicate the applicable collective-bargaining agreement nor were they completely preempted by section 301(a) of the LMRA. Plaintiffs' motion for remand, therefore, was allowed. *Jones v. Caterpillar, Inc.* (Aug. 7, 1987, C.D. Ill. No. 86-3047 (order allowing motion for remand)).

Defendant then filed an answer to the complaint and raised as an affirmative defense that plaintiffs' claims were preempted by

section 301(a) of the LMRA and that plaintiffs failed to allege the prerequisites to suit under that section. Plaintiffs later filed a motion for summary judgment, and defendant filed a cross-motion for summary judgment, again arguing that plaintiffs' claims for breach of the apprenticeship agreements were preempted by section 301(a) of the LMRA. The trial court denied both motions for summary judgment. In so ruling, it found that the apprenticeship agreements were not "subsumed" into the collective-bargaining agreement, and the claims, therefore, were not preempted.

On July 25, 1989, plaintiffs filed an amended complaint. Each of the 45 plaintiffs alleged one count of misrepresentation and one count of breach of contract. Defendant subsequently filed a motion requesting the court to reconsider the order denying its motion for summary judgment and in the alternative asking it to certify the issue for appeal. The trial court certified the issue of "[w]hether the resolution of this case requires the interpretation of a collective[-]bargaining agreement and, accordingly, whether the suit is preempted by Section 301 of the [LMRA]" for interlocutory appeal. On October 23, 1989, this court denied defendant's petition for leave to appeal. (*Jones v. Caterpillar, Inc.* (Oct. 23, 1989, 4th Dist. No. 4-89-0792 (order of clerk denying petition for leave to appeal)).) Defendant then answered the amended complaint and again asserted the affirmative defense of preemption.

On October 30, 1989, the trial court granted plaintiff's motion to join 120 additional persons and to supplement its amended complaint. Each new plaintiff filed one count of misrepresentation and one count of breach of his or her apprenticeship agreement. Defendant answered the supplement to the amended complaint and reiterated its affirmative defense of preemption. On December 9, 1991, defendant filed a renewed motion for summary judgment, asserting that plaintiffs' claims were preempted by section 301(a) of the LMRA. To support its conten-

tion, it cited the recent *Schacht* decision and filed volumes of materials from the *Schacht* record. The trial court granted defendant's renewed motion for summary judgment on the basis of the *Schacht* decision, and this appeal followed.

Summary judgment is properly granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Ill. Rev. Stat. 1991, ch. 110, par. 2-1005(c); see also *Purtill v. Hess* (1986), 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871; *Wright v. St. John's Hospital of the Hospital Sisters of the Third Order of St. Francis* (1992), 229 Ill. App. 3d 680, 682, 593 N.E.2d 1070, 1072.) Because it is a drastic means of disposing of litigation, summary judgment should only be granted "when the right of the moving party is clear and free from doubt." (*Purtill*, 111 Ill. 2d at 240, 489 N.E.2d at 871; *Loyola Academy v. S & S Roof Maintenance, Inc.* (1992), 146 Ill. 2d 263, 271, 586 N.E.2d 1211, 1215; *Logan v. Old Enterprise Farms, Ltd.* (1990), 139 Ill. 2d 229, 233, 564 N.E.2d 778, 780.) The proper standard of review for evaluating the propriety of the trial court's entry of summary judgment is *de novo*. (See *Outboard Marine Corp. v. Liberty Mutual Insurance Co.* (Dec. 4, 1992, Nos. 71753, 71761 cons., slip op. at 4), __ Ill. 2d __, __, __ N.E.2d __, __; *Illinois Municipal League Risk Management Association v. Seibert* (1992), 223 Ill. App. 3d 864, 869, 585 N.E.2d 1130, 1134; *Shull v. Harristown Township* (1992), 223 Ill. App. 3d 819, 824, 585 N.E.2d 1164, 1167.) A reviewing court will reverse an order granting summary judgment when it finds the existence of a genuine issue of material fact. *Department of Revenue v. Heartland Investments, Inc.* (1985), 106 Ill. 2d 19, 31, 476 N.E.2d 413, 419.

On appeal, plaintiffs contend the third district in *Schacht* and the trial court in the present case erred in determining that State-law claims based on the apprenticeship agreements are pre-

empted by section 301(a) of the LMRA. Obstensibly [sic], plaintiffs claim that their layoffs violated their individual apprenticeship agreements because the agreements did not state that they could be terminated from the program for economic reasons. Rather, they could only be terminated from the program for failure to meet the standards of the course. Their claims, therefore, are based solely on the alleged breach of the apprenticeship agreements which are completely separate and independent from the collective-bargaining agreement. Since the resolution of their claims are not substantially dependent upon the applicable collective-bargaining agreement nor do they require an interpretation of the agreement, plaintiffs contend their claims are not preempted.

Conversely, defendant argues that plaintiffs' claims cannot be resolved without the trial court interpreting the collective-bargaining agreement. It contends the collective-bargaining agreement continued to apply to the plaintiffs after they entered the apprenticeship program and that plaintiffs were laid off according to its layoff and seniority provisions. Since resolution of plaintiffs' claims would involve an analysis and interpretation of the collective-bargaining agreement, defendant maintains the trial court correctly determined the claims were preempted by section 301(a) of the LMRA.

Schacht and the present case are factually identical. In *Schacht*, 17 laid-off employees filed an action against Caterpillar for failing to continue their employment and training pursuant to their apprenticeship agreements. The issue on appeal was whether the trial court properly determined that plaintiffs' State-law contract claims were preempted under section 301(a) of the LMRA. *Schacht*, 213 Ill. App. 3d at 171-72, 571 N.E.2d at 1216-17.

The third district held that resolution of plaintiffs' State-law based claims required interpretation of the collective-bargaining

agreement and were therefore preempted by section 301(a) of the LMRA. In so holding, it stated:

> "The plaintiffs argue that the apprenticeship agreements are separate employment contracts which do not require interpretation of the collective-bargaining agreement. We cannot agree. The plaintiffs availed themselves of many of the benefits available under the collective-bargaining agreement. Many of the terms of their employment were derived from the collective-bargaining agreement. The nature of the relationship between the apprenticeship agreements and the collective-bargaining agreements of necessity requires an interpretation of those collective-bargaining agreements. That interpretation is governed by Federal labor law and any State-law action in such circumstances is preempted by section 301(a). We cannot resolve this issue under State-law contract principles." *Schacht*, 113 Ill. App. 3d at 175, 571 N.E.2d at 1218.

As an aside, the court asserted that it agreed with the trial court's finding "that the apprenticeship agreements were made within the context of the collective-bargaining agreements, and that plaintiffs' employment remained subject to the terms and conditions of the collective-bargaining agreements." (*Schacht*, 213 Ill. App. 3d at 175, 571 N.E.2d at 1218.) It also agreed that the apprenticeship agreements were not completely separate and independent agreements. Accordingly, the appellate court found the trial court's entry of summary judgment was appropriate. *Schacht*, 213 Ill. App. 3d at 175, 571 N.E.2d at 1218.

We agree with the decision in *Schacht* and hold that plaintiffs' claims are preempted under section 301(a) of the LMRA. Plaintiffs, contend, however, that the *Schacht* court wrongly decided the case because it misapplied the "substantially dependent" test delineated in *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. 202, 85 L. Ed. 2d 206, 105 S. Ct. 1904, failed to identify specific

contract provisions in the collective-bargaining agreement needed to resolve their claims, and failed to specify how the apprenticeship agreement was dependent upon the collective-bargaining agreement for interpretation. Further, they contend *Schacht* overlooks the fact that the apprenticeship agreements are separate and complete contracts from the collective-bargaining agreement. We do not believe the *Schacht* court misapplied the test delineated in *Lueck* and in applying the test to the present case, we find, as did the *Schacht* court, plaintiffs' claims are preempted.

Section 301(a) of the LMRA provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (29 U.S.C. §185(a) (1988).)

The supreme court has held that this section not only confers jurisdiction on Federal courts to hear controversies involving collective-bargaining agreements but also authorizes Federal courts to fashion a body of Federal law for the enforcement of these collective-bargaining agreements. *Textile Workers Union v. Lincoln Mills* (1957), 353 U.S. 448, 450-51, 1 L. Ed. 2d 972, 977-78, 77 S. Ct. 912, 914-15.

The preemptive effect of section 301(a) of the LMRA was first analyzed in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers v. Lucas Flour Co.* (1962), 369 U.S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571. In that case, the Court held that suits involving a violation of a provision of a collective-bargaining agreement must be brought under section 301(a) and resolved by reference to Federal law to ensure uniform interpretation of collective-

bargaining agreements and to promote the peaceable, consistent resolution of labor-management disputes. *Lucas Flour*, 369 U.S. at 103-04, 7 L. Ed. 2d at 598-99, 82 S. Ct. at 576-77.

Following *Lucas Flour*, the Supreme Court held that the preemptive effect of section 301(a) extended beyond suits alleging contract violations and reached certain claims sounding in tort. "Any other result would elevate form over substance and allow parties to evade the requirements of [section] 301 by relabeling their contract claims as claims for tortious breach of contract." (*Lueck*, 471 U.S. at 211, 85 L. Ed. 2d at 215, 105 S. Ct. at 1911.) Thus, the Court adopted the following rule: "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a [section] 301 claim, [citation omitted], or dismissed as preempted by Federal labor-contract law." (*Lueck*, 471 U.S. at 220, 85 L. Ed. 2d at 221, 105 S. Ct. at 1916; see also *Williams*, 482 U.S. at 396, 96 L. Ed. 2d at 328, 107 S. Ct. at 2431; *International Brotherhood of Electrical Workers v. Hechler* (1987), 481 U.S. 851, 859 n.3, 95 L. Ed. 2d 791, 801 n.3, 107 S. Ct. 2161, 2167 n.3; *Lingle v. Norge Division of Magic Chef, Inc.* (1988), 486 U.S. 399, 405-06, 100 L. Ed. 2d 410, 418-19, 108 S. Ct. 1877, 1881.) The Court has made it clear, however, that not every dispute concerning employment, or tangentially involving a provision of the collective-bargaining, is preempted by section 301. (*Lueck*, 471 U.S. at 211-13, 85 L. Ed. 2d at 215-16, 105 S. Ct. at 1911-12.) "[A]s long as the state-law claim can be resolved without interpreting the agreement itself, the claim is independent of the agreement for [section] 301 preemption purposes." *Lingle*, 486 U.S. at 410, 100 L. Ed. 2d at 421, 108 S. Ct. at 1883.

In determining whether plaintiffs' claims are "substantially dependent" upon an analysis of the collective-bargaining agreement, an examination of the claims is necessary. The misrepresentation count in the present case alleged defendant represented

that if plaintiffs entered into the apprenticeship training program defendant would instruct plaintiffs for the entire training period subject to defendant's right to separate them from the course only for failure to maintain its standards. Plaintiffs assert defendant made these representations knowing them to be false and that it would separate plaintiff from the program for reasons other than plaintiffs' failure to maintain the standards of the course. The breach of contract count alleged that plaintiffs and defendant entered into an agreement in which defendant promised to instruct plaintiffs for the entire training period set forth in the contract subject to defendant's right to separate plaintiffs from the program only for failure to maintain the standards of the course. After entering into the agreement, defendant breached the contract by terminating plaintiffs from the program for reasons other than failure to maintain the standards of the course.

At first blush, it might appear from the language of the complaint that plaintiffs' claims fall outside section 301 of the LMRA, and that resolution of those claims does not involve an interpretation or construction of the collective-bargaining agreement. It is true that plaintiffs base their claims solely on State law, and that neither claim relies upon the collective-bargaining agreement nor do they address the relationship between the apprenticeship agreements and the collective-bargaining agreement. Further, the individual apprenticeship agreements make no reference to the collective-bargaining agreement except for the wage scale. Yet, in determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined. This will require an interpretation of the collective-bargaining agreement which is governed by Federal law and preempted by section 301(a). This is not the sort of tangential relationship to the collective-bargaining agreement referred to by the Court in *Lingle*.

Moreover, the allegations of the complaint alone will not always resolve the preemption issue. The defenses, as well as the claims, must be considered in determining whether resolution of the State-law claim requires construing the collective-bargaining agreement. See *Hanks v. General Motors Corp.* (8th Cir. 1988), 859 F.2d 67, 70; *Smith v. Colgate Palmolive Co.* (7th Cir. 1991), 943 F.2d 764, 769-771; *Lingle*, 486 U.S. at 405-07, 100 L. Ed. 2d at 418-19, 108 S. Ct. at 1881-82 (finding that neither the elements of the tort nor the defense to the tort required an interpretation of the collective-bargaining agreement); *Williams*, 482 U.S. at 398, 96 L. Ed. 2d at 331, 107 S. Ct. at 2433 (when a defense to a State-law claim is based on the terms of a collective-bargaining agreement, the State court will have to interpret the agreement to determine if the State-law claim survives); but see *Berda v. CBS Inc.* (3d Cir. 1989), 881 F.2d 20, 25; *McCormick v. AT & T Technologies, Inc.* (4th Cir. 1991), 934 F.2d 531, 545 (en banc) (Phillips, J., dissenting).

Defendant contends that plaintiffs were laid off pursuant to the layoff and seniority provisions of the applicable collective-bargaining agreement. This defense clearly implicates the collective-bargaining agreement so that its interpretation is required to resolve the dispute at hand. Moreover, there is no provision in the apprenticeship agreements or the collective-bargaining agreements specifically exempting apprentices from the provisions of the collective-bargaining agreement. Therefore, resolution of plaintiffs' claims would be substantially dependent upon the collective-bargaining agreement so that the claim would be preempted. Summary judgment, therefore, was appropriate.

As to the fraudulent misrepresentation count, one of the elements of fraudulent misrepresentation is that the injured party justifiably relied on the false statement. (Seefeldt v. *Millikin National Bank* (1987), 154 Ill. App. 3d 715, 719, 506 N.E.2d 1052, 1055.) In determining whether reliance is reasonable,

courts must look to all the relevant circumstances surrounding the alleged misrepresentation. (*Seefeldt*, 154 Ill. App. 3d at 719, 506 N.E.2d at 1055.) Since defendant alleges plaintiffs were still covered by the collective-bargaining agreement which contained a provision for layoffs, it would seem necessary that to properly review plaintiffs' claims the court would need to evaluate the collective-bargaining agreement to determine whether it was reasonable for plaintiffs to believe that they could not be terminated from the apprenticeship program for economic reasons. This claim therefore is also preempted.

Plaintiffs also argue that the *Schacht* court applied an erroneously restrictive view of *Williams*. They argue that the supreme court in *Williams* determined that contract claims based on agreements separate from the collective-bargaining agreement were not dependent upon an interpretation of the collective-bargaining agreement and therefore not preempted.

In *Williams*, former employees brought suit against Caterpillar in State court alleging it breached their individual employment contracts. Caterpillar sought to remove the action to Federal court arguing that removal was proper because the action was preempted by section 301 of the LMRA. *Williams*, 482 U.S. at 390-91, 96 L. Ed. 2d at 325-26, 107 S. Ct. at 2428.

In determining that the case should be remanded, the Supreme Court focused on whether the complaint standing alone fell within the scope of section 301(a). The Court noted that, absent diversity, the presence or absence of Federal question jurisdiction was governed by the "well-pleaded complaint rule." This rule provides that Federal jurisdiction exists only when a Federal question is presented on the face of the plaintiff's properly pleaded complaint. The Court further stated "it is now settled law that a case may *not* be removed to Federal court on the basis of a Federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even

if both parties concede that the Federal defense is the only question truly at issue." (Emphasis in original.) *Williams*, 482 U.S. at 393, 96 L. Ed. 2d at 327, 107 S. Ct. at 2430.

The Court distinguished a corollary to the well-pleaded complaint rule — the "complete preemption" doctrine. Under this doctrine, the Court has concluded that the preemptive force of a statute is so extraordinary that it converts a State-law complaint into one stating a Federal claim for purposes of the well-pleaded complaint rule. "Once an area of state law has been completely preempted, any claim purportedly based on that preempted state law is considered, from its inception, a Federal claim, and therefore arises under Federal law." *Williams*, 482 U.S. at 393, 96 L. Ed. 2d at 328, 107 S. Ct. at 2430.

The Court held respondents' State-law contract claims were not "completely preempted" by section 301(a) of the LMRA. Section 301(a) governs claims founded directly on rights created by collective-bargaining agreements, and also claims "substantially dependent on analysis of a collective-bargaining agreement." (*Williams*, 482 U.S. at 394, 96 L. Ed. 2d at 328, 107 S. Ct. at 2431.) Since respondents' claims were based solely on *individual* contracts, distinct from the collective-bargaining agreement, and their complaint was not "substantially dependent" upon an interpretation of the collective-bargaining agreement, the Court found the claims fell outside the complete preemption doctrine. *Williams*, 482 U.S. at 394, 96 L. Ed. 2d at 328, 107 S. Ct. at 2431.

Having disposed of the complete preemption doctrine, the Supreme Court returned to the question of whether, under the well-pleaded complaint rule, respondents' suit had a Federal jurisdictional basis. It concluded that because the respondents' well-pleaded complaint sounded entirely on State law their suit did not arise under section 301(a) and could not be removed to Federal court. *Williams*, 482 U.S. at 399, 96 L. Ed. 2d at 331, 107 S. Ct. at 2433.

The *Schacht* court distinguished *Williams* by noting that it dealt with removal jurisdiction and did not reach the substantive merits of a preemption defense. Moreover, it found that while a cause of action may not be removable based on a section 301(a) preemption defense, that did not mean that the cause of action was ultimately preempted under section 301(a). Because the issue before *Williams* was removal jurisdiction, any discussion of the merits of the preemption defense was *dictum*. (*Schacht*, 213 Ill. App. 3d at 173-75, 571 N.E.2d at 1217-18.) We agree that *Williams* does not address the merits of this case for the reasons cited by the *Schacht* court.

Moreover, we note that *Williams* specifically stated that it did not intimate a view on the merits of Caterpillar's defense that section 301 preempts a State-law claim when the employer raises a defense that requires the interpretation or application of the collective-bargaining agreement or any of the other preemption arguments discussed. Rather, it asserted that these questions should be addressed by the State court in the first instance. (*Williams*, 482 U.S. at 398 n.13, 96 L. Ed. 2d at 331 n.13, 107 S. Ct. at 2433 n.13.) It accordingly recognized that when a defense to a State-law claim is based on the collective-bargaining agreement courts will have to interpret that agreement to decide whether the State claim survives. *Williams*, 482 U.S. at 398, 96 L. Ed. 2d at 331, 107 S. Ct. at 2433.

Defendant also asserts various other reasons why the trial court's decision should be affirmed. Because we agree plaintiffs' claims were preempted under section 301(a) of the LMRA, we need not address these other issues.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.

STEIGMANN, P.J., and KNECHT, J., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

June 3, 1993

Mr. Mark M. Silvermintz
Carr, Korein, Schlichter, Kunin & Montroy
412 Missouri Ave.
E. St. Louis, IL 62201

No. 75171 — C. Michael Jones, et al., petitioners, v. Caterpillar Tractor Company, etc., respondent. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1993.

APPENDIX C

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

No. 86-L-4

C. MICHAEL JONES, et al.,
Plaintiff,

v.

CATERPILLAR INC.,
Defendant.

(JONES VS CATERPILLAR) 4-16-92 JES/LKB-h

Present the Plaintiff by Attorney Silvermintz; the Defendant by Attorney Warner. Cause called for hearing on Defendant's Renewed Motion for Summary Judgment. Arguments heard. Defendant's Renewed Motion for Summary Judgment allowed on the basis of the authority cited in the *Schacht* decision. Plaintiff's Motion to Strike argued and denied. Copy of this docket entry sent by Court to Attorneys Silvermintz and Warner. Cause stricken.

(Docket Entry)

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS —
SPRINGFIELD DIVISION

No 86-3047

C. MICHAEL JONES, et al.,
Plaintiffs,

v.

CATERPILLAR, INC.,
Defendant.

ORDER

[Filed: Aug. 6, 1987]

MILLS, District Judge:

On July 7, 1987, this Court ordered Defendant Caterpillar Inc. to show cause why this action should not be remanded to state court based upon the Supreme Court's decision in *Caterpillar Inc. v. Williams*, 107 S. Ct. 2425 (1987). The question presented there is identical to the one posed by this case: whether Plaintiffs' state law complaint for breach of individual employment contracts is completely pre-empted by §301 of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. §185, and therefore removable to federal court. *Williams* ruled in the negative, thus prompting this Court's order to show cause.

Caterpillar's response argues that *Williams* is legally distinguishable from the case at hand. We are unable to agree with that conclusion; *ergo,* this action is remanded to the tribunal originally selected by Plaintiffs.

I

Before proceeding to our analysis of the question presented, a short review of the procedural history of this cause is in order.

The 45 Plaintiffs in this action are former employees of Caterpillar's Decatur plant and were hired as apprentices at various times between 1979 and 1986. As apprentices, each signed a written employment contract with Caterpillar. Both apprentice and nonapprentice Caterpillar employees were covered by a collective bargaining agreement (CBA) (either the contract signed December 15, 1979, or its successor effective April 19, 1983). The individual apprenticeship agreements, however, made no reference to the CBA; and apprentices were only briefly mentioned in a letter of agreement made part of the CBA. The most important component of the individual apprenticeship contracts provides for discharge only upon a showing of unsatisfactory performance.

In their state court complaint, Plaintiffs allege their discharges breached that provision. Subsequently, Caterpillar removed the action to this federal court, arguing that removal is proper because the individual employment contracts made with Plaintiffs are superceded [sic] by the CBA and thus preempted by §301 of the LMRA, 29 U.S.C. §185. Plaintiffs deny that their state claims are preempted, and seek remand of this action to its proper destination. In a written report and recommendation, United States Magistrate Charles H. Evans, relying heavily on the district court opinion *Binkley v. Caterpillar*, No. 85-1201 (C.D. Ill., Oct. 6, 1985) (involving essentially this situation), recommended that 44 of the 45 Plaintiffs be remanded to state court.

In *Binkley*, the Court ruled that 14 of 17 Decatur plant apprentices who were laid off prior to the execution of the 1983 CBA were subject to remand. In so holding, the Court determined that Plaintiffs' state law claims were not grounded, either directly or indirectly, upon rights or liabilities created by the 1979 CBA. Thus, since Plaintiffs' cause of action did not require interpretation or application of the CBA, the Court concluded that it did not arise under §301 and was not removable to federal

court. *Binkley* also held, however, that the claims of three apprentices discharged after the effective date of the 1983 CBA were preempted by §301 due to the expanded treatment of the apprenticeship program in that agreement.

The Magistrate found *Binkley* "persuasive and controlling authority under the doctrines of collateral estoppel and *stare decisis*." Further, based upon his independent analysis of the question, the Magistrate concluded that the Court's decision was correct. The case is now before this tribunal upon Caterpillar's objections to that conclusion, as well as the additional authority provided by the Supreme Court in *Williams*. We adopt the majority of the Magistrate's recommendation, but hold that all Plaintiffs must be remanded to the state court.

II

Contrary to Caterpillar's assertions, we believe that *Williams* controls the outcome of this case. There, the Supreme Court ruled, *inter alia*, that state law breach of contract claims premised upon the reported breach of a contract *other than a CBA* are not necessarily "completely preempted" by §301 claims. Instead, the well pleaded complaint rule (which provides that federal jurisdiction exists only when a federal question is presented on the face of Plaintiffs' properly pleaded complaint) makes "the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Williams*, 107 S. Ct. at 2429. Thus, *Williams* concluded that where an employee alleges breach of contract under state law, and the issue does not require the interpretation of the CBA, he or she may choose the state forum by so pleading.

Caterpillar asserts, however, that *Williams* is distinguishable because the independent agreements in that case were executed while the employees were not also covered by a CBA; here, the Plaintiffs executed their contracts while they were within the bargaining unit. This factual distinction is not persuasive. *Wil-*

liams is grounded not upon the *time period* during which independent agreements were executed, but rather upon whether Plaintiffs' action is founded on rights created by a CBA. *See Williams*, 107 S. Ct. at 2432 n.12. This is because §301 governs only those claims "substantially dependent on analysis of a CBA. . . . Section 301 says nothing about the content or validity of individual employment contracts." *Williams*, 107 S. Ct. at 2425 (1987). As was the case in *Williams*, Plaintiffs, as members of the bargaining unit, did possess substantial rights under the CBA, and could have brought suit under §301. But as masters of their complaint, they chose not to do so.

Here, Plaintiffs' complaint — a state law breach of contract claim--is not substantially dependent upon an interpretation of the CBA. It does not rely upon the agreement indirectly, nor does it address the relationship between the individual contracts and the CBA. Moreover, this conclusion holds as true for the one Plaintiff discharged after the 1983 contract was executed as it does for the remaining 44. The *existence* of a CBA is simply not the governing factor; instead, as the Supreme Court's landmark decision in *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985), teaches, the crux of the inquiry is whether the plaintiff's claims, as he or she pleads them, substantially depend upon an analysis of the collective bargaining agreement. *See Williams*, 107 S. Ct. at 2432 n.10. Plaintiffs' claims in the instant case do not; therefore, they are not preempted by §301 and were improperly removed to federal court.

Caterpillar additionally maintains that the Seventh Circuit's recent *en banc* decision in *Lingle v. Norge Division of Magic Chef*, Slip op. Nos. 85-2971 and 86-1763 (7th Cir., June 23, 1987), rendered fourteen days after *Williams*, supports removal of this case. In *Lingle*, the Court held that §301 preempted the plaintiff's purported state law tort claims (based upon retaliatory discharge, intentional interference with employment contracts, and the defectiveness of certain discharge procedures) where the

only contract controlling her employment rights was the CBA. The case is inapposite to the present scenario. Unlike *Lingle*, there clearly is a separate contract controlling the Plaintiffs' employment rights in this case, and they chose to allege *only* a breach of those contracts. As *Williams* holds, Plaintiffs have the right to so proceed, and Caterpillar has no basis for removal; Finally, Plaintiffs correctly note that *Lingle* itself distinguished claims based upon individual contracts. And to the extent any of the language in *Lingle* is inconsistent with *Williams*, the latter — being the law of this nation — must of course prevail.

In sum, we hold that Plaintiffs' state law claims for breach of their individual apprenticeship contracts do not implicate the CBA and are not preempted by §301. Therefore, removal was improper.

Plaintiffs' motion for remand is ALLOWED.

This action is hereby REMANDED to the state court for the Seventh Judicial Circuit, Sangamon County, Illinois.

ENTER: 6 August, 1987.

FOR THE COURT:

/s/ Richard Mills
RICHARD MILLS
United States District Judge

APPENDIX E

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

No. 86-L-4

C. MICHAEL JONES, et al.,
Plaintiff,

v.

CATERPILLAR INC.,
Defendant.

7/18/89 Cause called on Plaintiff's Motion for Summary Judgment, Motion denied, there being genuine issues of fact remaining in the case. Defendant's Motion for Summary Judgment called for hearing. Motion denied. The apprenticeship agreements were not "subsumed" into the collective bargaining agreements, and therefore, were not preempted by Section 301 of the Labor Management Relations Act."

CJC/nek

(Docket Entry)

APPENDIX F

213 Ill.App.3d 169
571 N.E.2d 1215

Robert D. SCHACHT, Jr., Barry W. Hansis, Roger D. Hoffman, and Patty Mikels, on their own behalf and as representatives of all others similarly situated, Plaintiffs,

v.

CATERPILLAR INC., Defendant.

Jimmey D. GARRY, Plaintiff,

v.

CATERPILLAR INC., Defendant.

Charles E. BINKLEY, et al., Plaintiffs,

v.

CATERPILLAR INC., Defendant.

Charles E. BINKLEY, Candace Tolley, and William Trotter, Plaintiffs,

v.

CATERPILLAR INC. Defendant.

William WARDEN and Bruce Osgood, Plaintiffs,

v.

CATERPILLAR INC., Defendant.

Nos. 3-90-0431, 3-90-0466, 3-90-0659, 3-90-0668 and 3-90-0669.

Appellate Court of Illinois,
Third District

May 20, 1991.

Laid-off employees sued their employer for alleged violations of the terms of certain "Apprenticeship Agreements." The

Circuit Court, Peoria County, Joe B. McDade, J., granted employer's motion for summary judgment, and employees appealed. The Appellate Court, Stouder, P.J., held that employees' actions were preempted by § 301(a) of the Labor Management Relations Act of 1947.

Affirmed.

Labor Relations key 773

States key 18.45

Laid-off employees' state court actions against their employer for breach of "Apprenticeship Agreements" were preempted under § 301(a) of the Labor Management Relations Act; nature of relationship between Apprenticeship Agreements and collective-bargaining agreements of necessity required interpretation of those collective-bargaining agreements, and Apprenticeship Agreements were not completely separate and independent from collective-bargaining agreements. Labor Management Relations Act, 1947, § 301(a), 29 U.S.C.A. § 185(a).

Alexandra de Saint Phalle (argued), Gary L. Cline, Londrigan, Potter & Randle, P.C., Springfield, for Robert D. Schacht, Jr., Barry W. Hansis, Roger D. Hoffman, and Patty Mikels.

Diane E. Greanias (argued), Andrew J. Kleczek, Kelley & Kleczek, Peoria, for Charles E. Binkley, William Warden, Bruce Osgood, Candace Tolley, and William Trotter.

Michael D. Gifford (argued), Rochford & Associates, Peoria, for Jimmey D. Garry.

J. Stephen Poor, Michael A. Warner (argued), Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Theodore R. Johnson, Caterpillar Tractor Co., Peoria, for Caterpillar, Inc.

OPINION

Presiding Justice STOUDER.

These consolidated appeals involve five separate actions brought against the defendant, Caterpillar, Inc., for alleged violations of the terms of certain "Apprenticeship Agreements." The plaintiffs are former and present employees of Caterpillar. In each of the actions, the trial court granted summary judgment for Caterpillar, finding *inter alia,* that the plaintiffs' claims were pre-empted under Section 301(a) of the Labor Management Relations Act of 1947 (LMRA) (29 U.S.C. § 185(a)). The plaintiffs appeal from those judgments, and we affirm.

Although the procedural history of these cases are rather complex, they present this court with a single issue, whether the trial court properly determined that the plaintiffs' state law contract claims were pre-empted under § 301(a) of the LMRA.

At various times in the late 1970's and early 1980's, the plaintiffs held positions as apprentices with Caterpillar. The terms of these apprenticeships were set forth in a standardized apprenticeship agreement entered into between each individual employee and Caterpillar. Among the provisions, the agreements provided for the grounds upon which the apprenticeships would be terminated. At all times relevant, the plaintiffs were members of one of three unions which represent employees at Caterpillar facilities. Because of the economic difficulties experienced by Caterpillar in the early 1980's, Caterpillar laid off the plaintiffs pursuant to the layoff and seniority provisions of the applicable collective-bargaining agreement covering each plaintiff.

On March 20, 1985, seventeen laid off employees of Caterpillar filed an action in the circuit court of Peoria County. In their complaint, the plaintiffs alleged breach of contract on the part of Caterpillar for its failure to continue their employment and

training pursuant to the written apprenticeship agreements. This action was designated *Binkley et al. v. Caterpillar* and is referred to as Binkley I by the parties.

Caterpillar attempted to remove the action to the U.S. District Court, contending the plaintiffs' actions were pre-empted by § 301(a). Caterpillar also filed a motion to dismiss the plaintiffs' claims. On September 26, 1985, the Federal District Court denied Caterpillar's request for removal, and remanded the actions of fourteen of the plaintiffs to the Illinois circuit court. The Court found that those plaintiffs who left the apprenticeship program prior to the effective date of the 1983 collective-bargaining agreement had individual employment contracts, and thus state causes of action. The court held that their claims were not pre-empted by § 301(a).

The District Court dismissed the claims of three of the plaintiffs, including plaintiff Charles Binkley. The court found that these plaintiffs' apprenticeship agreements were merged into the 1983 collective-bargaining agreement. These three plaintiffs later refiled their action in the circuit court alleging the same breach of contract claims. This action is referred to as Binkley II.

Plaintiffs William Warden and Bruce Osgood filed complaints against Caterpillar on August 9, 1986. This action is referred to as Warden. Binkley I, Binkley II and Warden were consolidated for discovery purposes by the trial court.

Meanwhile, four plaintiffs filed a complaint against Caterpillar on February 26, 1986. Eventually, this action was certified as a class action, and will be referred to as Schacht.

Plaintiff Jimmey Garry filed a complaint against Caterpillar on December 11, 1989, and this case will be referred to as Garry.

On January 19, 1990, the Schacht plaintiffs filed a motion for judgment on the pleadings. On April 30, 1990, the plaintiffs in

Binkley I, Binkley II and Warden filed motions for summary judgment. Caterpillar filed motions for summary judgment in all five causes of action, including Garry. In the motions for summary judgment, Caterpillar argued that the plaintiffs' causes of action were pre-empted under Section 301(a) of the LMRA. In addition, Caterpillar maintained that the actions were also pre-empted under the National Labor Relations Act.

On May 30, 1990, without comment Judge Courson granted Caterpillar's motion for summary judgment in the Garry case. On June 6, 1990, Judge McDade entered an order denying the Schacht plaintiffs' motion for judgment on the pleadings and granting Caterpillar's motion for summary judgment. The trial court found *inter alia* that because resolution of the plaintiffs' claims depended on interpretation of the applicable collective-bargaining agreement's provisions for lay off and seniority, plaintiffs' claims were pre-empted by Section 301(a). Based on his findings and decision in the Schacht case, Judge McDade granted Caterpillar's motions for summary judgment in Binkley I, Binkley II and Warden on August 31, 1990. As initially indicated these five cases were consolidated for purposes of this appeal.

On appeal, the plaintiffs contend the trial court erred in finding that their claims were pre-empted under Section 301(a).

Sections 301(a) provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect of the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

Recently, the United States Supreme Court succinctly stated its § 301 jurisprudence.

"Over 30 years ago, this Court held that § 301 not only provides the federal courts with jurisdiction over controversies involving collective-bargaining agreements but also authorizes the courts to fashion 'a body of federal law for the enforcement of these collective bargaining agreements.' (Citation omitted) Since then, the Court has made clear that § 301 is a potent source of federal labor law, for though state courts have concurrent jurisdiction over controversies involving collective-bargaining agreements, (citation omitted), state courts must apply federal law in deciding those claims, (citation omitted), and indeed any state-law cause of action for violation of collective-bargaining agreements is entirely displaced by federal law under § 301 (citation omitted). State law is thus 'pre-empted' by § 301 in that only the federal law fashioned by the courts under § 301 governs the interpretation and application of collective-bargaining agreements." *United Steelworkers v. Rawson* (1990), 495 U.S. __, __ _ __, 110 S.Ct. 1904, 1909, 109 L.Ed.2d 362, 372-373.

In *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. 202, 105 S.Ct. 1904, 85 L.Ed.2d 206, the Supreme Court held that when resolution of a state-law claim is substantially dependent upon analysis of the terms of a collective-bargaining agreement, that claim must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law.

The plaintiffs contend that their breach of contract actions are based solely on the alleged breach of the apprenticeship agreements, and that resolution of their claims does not require interpretation of the applicable collective-bargaining agreement. The plaintiffs assert that the apprenticeship agreements did not provide for the termination of the apprenticeships based on economic reasons.

The plaintiffs cite *Caterpillar, Inc. v. Williams* (1987), 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318, and the earlier decision of the District Court in Binkley I to support their

argument that Caterpillar's pre-emption defense has been rejected. We note however, that the issue in both cases was removal jurisdiction, not the substantive merits of a pre-emption defense. We also note that the District Court's decision was issued prior to *Williams*.

The plaintiffs also cite as support for their assertion, the decision of another Federal District Court in collateral proceedings arising out of the same controversy. (Order entered August 6, 1987 in *Jones et al. v. Caterpillar* No. 86-3047.) The District Court in that case also held that the action was not properly removable.

The plaintiffs misconstrue the scope of the decision in *Williams*. In *Williams*, the plaintiffs alleged that Caterpillar had breached individual contracts, and filed a complaint in state court. Caterpillar attempted to remove the action to the federal court by alleging the cause of action was pre-empted by § 301. The Supreme Court found that the action could not be removed because the plaintiffs' claims standing alone, did not arise under federal law. The Court reiterated "that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiffs' complaint, and even if both parties concede that the federal defense is the only question truly at issue." (*Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318, 327.) Absent diversity, the determination that jurisdiction is based on a federal question is governed by the well-pleaded complaint rule, under which the federal question must be presented on the face of the plaintiff's properly pleaded complaint. *Williams*, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318.

After finding that the plaintiffs' complaint did not state a federal claim on its face the *Williams* court stated, "It is true that when a defense to a state claim is based on the terms of a

collective-bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives. But the presence of a federal question, even a § 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule — that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Williams*, 482 U.S. 386, 398-399, 107 S.Ct. 2425, 2432-2433, 96 L.Ed.2d 318, 331.

While a cause of action may not be removable based on a § 301(a) pre-emption defense, that does not mean that the cause of action is not pre-empted under § 301(a). Thus the only question before the Court in *Williams*, and before District Court in Binkley I, was whether removal jurisdiction existed. Any discussion of the merits of Caterpillar's pre-emption defense by the District Court is dicta. On the other hand, in the instant cases, we are now presented with the substantive merits of Caterpillar's pre-emption defense. We must determine whether the trial courts below correctly found that the resolution of the plaintiffs' state-law contract claims are substantially dependent upon analysis of the applicable collective-bargaining agreement.

The plaintiffs allege that the termination of their participation in the Caterpillar apprenticeship program was in violation of the terms of the apprenticeship agreements. They contend their action is based solely on breach of this agreement. However, Caterpillar responds that they were laid off from employment with Caterpillar under the lay off and seniority provisions of the applicable collective-bargaining agreement.

The plaintiffs argue that the apprenticeship agreements are separate employment contracts which do not require interpretation of the collective-bargaining agreement. We cannot agree. The plaintiffs availed themselves of many of the benefits avail-

able under the collective-bargaining agreement. Many of the terms of their employment were derived from the collective-bargaining agreement. The nature of the relationship between the apprenticeship agreements and the collective-bargaining agreements of necessity requires an interpretation of those collective-bargaining agreements. That interpretation is governed by federal labor law and any state-law action in such circumstances is pre-empted by § 301(a). We cannot resolve this issue under state-law contract principles.

As an aside, we agree with Judge McDade's finding that the apprenticeship agreements were made within the context of the collective-bargaining agreements, and that the plaintiffs' employment remained subject to the terms and conditions of the collective-bargaining agreements. We agree that the apprenticeship agreements were not completely separate and independent agreements. The plaintiffs' reliance on *Belknap v. Hale* (1983), 463 U.S. 491, 103 S.Ct. 3172, 77 L.Ed.2d 798, is misplaced. *Belknap* concerned the issue of pre-emption under the National Labor Relations Act, not § 301(a). Nor do we find *Berda v. CBS, Inc.* (1989), 881 F.2d 20, persuasive. The *Berda* court relies on the reasoning of *Williams* without distinguishing the fact that *Williams* was a removal action, while the *Berda* court was presented with the substantive issue of the pre-emption defense.

Because we find the trial courts below correctly granted Caterpillar's motions for summary judgment, in that plaintiffs' claims were pre-empted by § 301(a), we need not address the other issues and arguments raised by the parties.

For the foregoing reasons the judgments of the circuit court of Peoria County are affirmed.

Affirmed.

McCUSKEY and HAASE, JJ., concur.

APPENDIX G

Robert D. SCHACHT, Jr., et al., petitioners,

v.

CATERPILLAR, INC.

No. 91-1090.

Charles E. BINKLEY, et al., petitioners,

v.

CATERPILLAR, INC.

No. 91-1095.

Case below, 213 Ill.App.3d 169, 157 Ill.Dec. 196, 571 N.E.2d 1215; 141 Ill.2d 560, 162 Ill.Dec. 508, 580 N.E.2d 134.

On petitions for writs of certiorari to the Appellate Court of Illinois, Third District.

March 9, 1992. The petitions for writs of certiorari are denied.

Justice WHITE, joined by Justice BLACKMUN, dissenting.

These cases present the question whether, following our decision in *Caterpillar, Inc. v. Williams,* 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987), a state-law cause of action is pre-empted under § 301 of the LMRA by a defense based on a collective bargaining agreement. A state-law cause of action is pre-empted under § 301 if its resolution is "substantially dependent on analysis of a collective bargaining agreement." *Electrical Workers v. Hechler,* 481 U.S. 851, 859, n. 3, 107 S.Ct. 2161, 2167, n. 3, 95 L.Ed.2d 791 (1987). See also *Allis-Chalmers v. Lueck,* 471 U.S. 202, 220, 105 S.Ct. 1904, 1915, 85 L.Ed.2d 206 (1985).

In the decision below, petitioners based their claims solely on state law, but respondent's defense invoked the provisions of a

collective bargaining agreement. The Illinois court held that petitioners' state-law claims were pre-empted under § 301 because their resolution was substantially dependent on interpretation of the applicable collective bargaining agreement. 213 Ill.App.3d 169, 157 Ill.Dec. 196, 199, 571 N.E.2d 1215, 1218. Several federal Courts of Appeals similarly have held that a court must look to defenses to determine whether a claim requires interpretation of a collective-bargaining agreement. See, e.g., *Smith v. Colgate-Palmolive Co.*, 943 F.2d 764, 769-771 (CA7 1991); *Hanks v. General Motors Co.*, 859 F.2d 67, 70 (CA8 1988).

By contrast, the Court of Appeals for the Third Circuit, relying on our decision in *Caterpillar, Inc. v. Williams*, has held that "in order for there to be section 301 pre-emption, the plaintiff, in its well-pleaded complaint, must plead an action that requires interpretation of the collective bargaining agreement." That Court accordingly examined the claims presented in the complaint and found no § 301 pre-emption. *Berda v. C.B.S. Inc.*, 881 F.2d 20, 25 (CA3 1989). See also *McCormick v. A.T. & T. Technologies, Inc.*, 934 F.2d 531, 545 (CA4 1991) (en banc) (Phillips, J., dissenting). The Illinois Court below expressly rejected the reasoning of *Berda*.

I would grant certiorari to resolve this conflict.

APPENDIX H

AGREEMENT

CATERPILLAR TRACTOR CO.

THIS AGREEMENT made in duplicate this 28th day of September, 1981.

FOR THE Two-Year Machine Shop Trainee

between the CATERPILLAR TRACTOR CO., hereinafter referred to as COMPANY, and

Mike Jones

of 2090 Solar Ave., Decatur, IL. 62526

hereinafter referred to as TRAINEE.

WITNESSETH that the COMPANY and the TRAINEE desire to enter into an agreement for Training. In consideration of the premises and of the covenants herein contained, the parties do hereby mutually agree as follows:

The COMPANY agrees to employ the TRAINEE for the purpose of enabling said TRAINEE to learn and acquire general skill and experience upon the terms and conditions contained in the "Terms of Agreement," hereto attached and made a part hereof.

The TRAINEE agrees to diligently and faithfully perform the work of the training program during the training period, complying with the terms and conditions contained in the "Terms of Agreement."

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed.

CATERPILLAR TRACTOR CO.

By: /s/ Kenneth A. Harm

/s/ Claude Michael Jones
TRAINEE

TERMS OF AGREEMENT

1. This agreement is to be dated and issued the day the applicant is enrolled in training. It shall be signed by the TRAINEE and a Company representative.

2. The training course will cover a period of 4000 hours and will include the work stations and classroom instruction necessary to develop a proficient craftsman in the trade. Wages will be increased each 1,000 training hours and the TRAINEE shall graduate after completing the specified number of hours.

3. The TRAINEE shall receive wages according to the current applicable schedule of rates.

4. The TRAINEE shall be issued personal tools and classroom study material required in the training schedule. The cost of these tools will be paid by the TRAINEE through monthly payroll deductions.

   Upon completing the course, the Trainee shall be reimbursed the cost of personal tools received, less withholding taxes. The tools then become the personal property of the TRAINEE.

   In the event the TRAINEE is separated from the training course, the balance due on these tools must be paid by the TRAINEE. The tools then become the personal property of the TRAINEE.

5. The TRAINEE shall complete a prescribed course of classroom study to develop technical skills. Classes shall be attended on Company time with subsequent study and homework done on TRAINEE'S own time.

6. The TRAINEE shall be under the general supervision of a Training Instructor throughout the training period. When

the work performed on a work station is not the direct responsibility of the Training Instructor, the TRAINEE shall also be subject to the direction of that area supervisor.

7. The Company reserves the right to separate the TRAINEE from the Training course for failure to maintain the standards of the course including but not limited to: unsatisfactory work, inability to acquire the necessary knowledge for graduation, improper conduct, indifferences to factory rules and regulations, insubordination, or any other justifiable reason. In the event of such separation, there shall be no liability of any kind on the part of the Company to said TRAINEE.

8. The TRAINEE shall have the right to terminate the Training Agreement at any time.

9. The Company will teach and instruct the TRAINEE in the trade during the entire training period. The TRAINEE shall graduate and receive a diploma after fulfilling the "Terms of Agreement."

10. The Company intends to offer the TRAINEE job placement after training is completed. The type of placement will depend upon the openings available, the ability and progress displayed during training, and the graduate's desires.

(2)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 93-358

IN THE

Supreme Court of the United States

October Term, 1993

C. MICHAEL JONES, et al.,

Petitioners,

v.

CATERPILLAR INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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18 pp

QUESTION RESTATED

Whether state law claims which are substantially dependent upon the interpretation and application of collective bargaining agreements are preempted by Section 301 of the Labor-Management Relations Act under Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) and its progeny?

STATEMENT REQUIRED BY RULE 29.1

Caterpillar Inc. whose name was Caterpillar Tractor Co. at the time the instant lawsuit was filed, has no parent company. Its non-wholly-owned subsidiaries and affiliates are: Mitsubishi Caterpillar Forklift America Inc.; Advanced Technology Services Inc.; Rapidparts Inc.; Cyclean, Inc.; Innovative Steam Technologies; RR-1 Limited Partnership; Bio-energy Partners; Health Plan of Central Illinois Inc.; Peoria Medical Research Corporation; Balderson Inc.; DUECO, Inc.; Caterpillar Industrial Inc.; Material Handling Associates, Inc.; Advanced Filtration Systems Inc.; Energy Power Systems Australia Pty. Limited (Australia); Gough & Gilmour Holdings Pty. Limited (Australia); Girandole Pty. Limited (Australia); Matchparts N.V. (Belgium); Caterpillar Finance France S.A.; EDC European Excavator Design Center GmbH & Co. KG (Germany); EDC European Excavator Design Center Verwaltungs GmbH (Germany); Caterpillar Hungary Component Manufacturing Company Ltd. (Hungary); Tractor Engineers Limited (India); Hindustan Powerplus Limited (India); P.T. Natra Raya (Indonesia); Mec-Track S.r.L. (Italy); Shin Caterpillar Mitsubishi Ltd. (Japan); Caterpillar MHI Marketing Ltd. (Japan); Itoh Tekkosho Co., Ltd. (Japan); Hokuirku Caterpillar Mitsubishi Construction Equipment Sales, Ltd. (Japan); Shizuoka Caterpillar Mitsubishi Construction Equipment Sales, Ltd. (Japan); K-Lea Kabushiki Kaisha (Japan); D.O.M. Ltd. (Japan); Rental Sanwa Kabushiki Kaisha (Japan); Turboservices SDN BHD (Malaysia); Mistubishi Caterpillar Forklift Europe B.V. (Netherlands); Mitsubishi Caterpillar Forklift Asia Pte. Ltd. (Singapore); and Caterpillar Financial Services (U.K.) Limited.

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No. 93-358

IN THE

Supreme Court of the United States

October Term, 1993

C. MICHAEL JONES, et al.,

Petitioners,

v.

CATERPILLAR INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this case, the Illinois Court of Appeals held that the claims of current and former employees who were covered by the terms of collective bargaining agreements throughout their employment and who were challenging their layoffs under the terms of those agreements on the basis that the layoffs violated their state contractual rights were preempted by Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"). This holding is simply a correct application of the principles of Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985), and its progeny to the particular facts of this case. It presents no issue that is appropriate for review by this Court.

STATEMENT OF THE CASE

Petitioners were employed by Caterpillar Inc. ("Caterpillar") at various production plants in Illinois. As production employees, Petitioners were all subject to collective bargaining agreements negotiated by their selected bargaining agents, in most cases the United Automobile Workers (UAW) (Pet. for Cert. at 5; R. C1423-24, C3585-86, C3839-40, C3946-47).[1] The collective bargaining agreements established the basic terms and conditions of employment for covered employees, including the layoff and recall terms.

At various times in their employment, Petitioners moved into the apprentice classification. When Petitioners entered that classification, however, they continued to be covered by the collective bargaining agreements in effect at their respective facilities. (Pet. for Cert. at 5; R. C1038, C1050-51, C1054-55). As noted in the decision below, "[w]hile serving as apprentices, [Petitioners] continued to hold membership in the union and to pay union dues" (A-2-A3).[2]

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[1]Although most of Petitioners worked in facilities represented by the UAW (R. C1423,-24, C3585-86, C3839-40, C3946-47), a few of Petitioners were represented by other unions (R. C3717-18). At all relevant times, however, all of Petitioners were represented by one of these labor organizations and each was covered by a collective bargaining agreement negotiated on their behalf by their particular labor organization.

[2]The undisputed record evidence amply supports this finding. For example, in the Peoria area, Article 1 of the UAW Local Supplement specifically provides that "apprentices" (other than patternmakers) are included in the bargaining unit defined by the National Labor Relations Board (R. C4048). The apprentice job titles and the applicable wage rates for apprentices at the Peoria facilities

Petitioners also concede this point: "That the plaintiffs in the case at bar were union members and covered by a collective bargaining agreement . . . is not in dispute" (Pet. for Cert. at 5).

In the early 1980's, Caterpillar began to experience a sharp decline in its business and during the next several years that erosion in business caused a series of layoffs at virtually all of the Company's facilities (R. C3587, C3948). In fact, these economic difficulties resulted in the closure of a number of facilities, such as Davenport, Iowa, Milwaukee, Wisconsin and San Leandro, California, among others. In initially carrying out the layoff at the UAW plants, Caterpillar followed the seniority-based reduction-in-force procedures set out in Article 13 of the Central Agreement and the related provisions of the Local Agreements (R. C3588-90, C3718, C3842-43, C3948). The Patternmaker layoffs were likewise carried out in accordance with the seniority-based reduction-in-force procedures of the Patternmakers contract (R. C3718). Pursuant to these procedures, a large number of apprentices were removed from their respective training programs (R. C3588).

The reductions of apprentices were the subject of numerous grievances under the collective bargaining agreements, including grievances by a number of Petitioners

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are set out in the Peoria Area Supplementary Rate Schedule in the Central Agreement (R. C3947, C4041-42). For purposes of applying the seniority provisions of the agreement, the apprenticeship program constitutes the Factory Training Major Group under Article 5 (Seniority) of the Local Supplement (R. C3947-48, C4055-58). Similar provisions are found in the Decatur and other UAW-Caterpillar local supplements (e.g., R. C3587, C3600, C3605-09). Similarly, the Patternmakers-Caterpillar contract provides that the Patternmakers Union is "the sole bargaining agent for all patternmakers and patternmaker apprentices" (R. C3717-18, C3798).

and were the subject of negotiations between Respondent and the various local unions of the UAW (R. C3589, C3842-43, C3948-49, C4087-4111). These grievances included grievances by apprentices at East Peoria protesting the 1981 layoffs and downgrades. Although Caterpillar and the UAW negotiated certain modifications to the methodology of reducing apprentices in certain locations (such as East Peoria), the continuing economic decline of the company required a continued reduction in force throughout Caterpillar's production facilities, including among the apprentices (R. C3587, C3948). Petitioners were among that group affected by the economic decline (R. C1061, C1354-58). They were each laid-off or reduced in classification at various times during the period between 1980 and 1985.

PROCEEDINGS BELOW

In 1986, the Petitioners filed a complaint in Illinois state court challenging their layoffs or downgrades and their consequent removals from the apprenticeship programs. Petitioners claim that their layoffs constituted "terminations" in violation of "Apprenticeship Agreements" ("AA") they signed upon entry into the apprentice program. Petitioners later amended their Complaint to add State-law tort claims for misrepresentation. Following extensive pretrial proceedings, Caterpillar moved for summary judgment in December, 1991, based on the decision of the Illinois Appellate Court in Schacht v. Caterpillar Inc., 213 Ill. App. 3d 169, 571 N.E.2d 1215 (3d Dist. 1991), appeal denied, 141 Ill. 2d 560, 580 N.E.2d 134 (1991), cert. denied, 112 S. Ct. 1306 (1992), holding that the identical claims of a class of Caterpillar apprentices were preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The trial court granted Caterpillar's motion "on the basis of the authority cited in the Schacht decision." (A-16).

Petitioners appealed to the Illinois Appellate Court for the Fourth District. After briefing and oral argument, the appellate court upheld the entry of summary judgment (A-1 - A-14). The appellate court noted that the petitioners availed themselves of the benefits of the collective bargaining agreements and that their employment remained at all times subject to the collective bargaining agreements. Accordingly, the court found that the apprenticeship agreements could not be viewed in isolation and that the terms of the Plaintiffs' employment would have to be extracted from both the apprenticeship agreements and the collective bargaining agreements. The appellate court held:

> [I]n determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined. This will require an interpretation of the collective-bargaining agreement which is governed by federal law and preempted by section 301(a).
>
> * * * *
>
> As to the fraudulent misrepresentation count, one of the elements of fraudulent misrepresentation is that the injured party justifiably relied on the false statement. (Seefeldt v. Millikin National Bank, (1987), 154 Ill. App. 3d 715, 719, 506 N.E.2d 1052, 1055.) In determining whether reliance is reasonable, courts must look to all the relevant circumstances

> surrounding the alleged misrepresentation. Seefeldt , 154 Ill. App. 3d at 719, 506 N.E.2d at 1055.) Since defendant alleges plaintiffs were still covered by the collective-bargaining agreement which contained a provision for layoffs, it would seem necessary that to properly review plaintiffs' claims the court would need to evaluate the collective-bargaining agreement to determine whether it was reasonable for plaintiffs to believe that they could not be terminated from the apprenticeship program for economic reasons. This claim therefore is also preempted.

(A-10 - A-12). On this basis, the appellate court affirmed the circuit court's entry of summary judgment for Caterpillar.[3] In the alternative, the court noted that the claims would be preempted in any event because the resolution of Caterpillar's defenses would also require the interpretation of the collective bargaining agreements. (A-11). Petitioners petitioned for leave to appeal to the Illinois Supreme Court. That Petition was denied. (A-15)

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[3]It is uncontroverted that Petitioners did not meet the prerequisites to suit under Section 301. For example, Petitioners did not exhaust their contractual grievance remedies (as required under Clayton v. International Union, UAW, 451 U.S. 679 (1981)) nor did they file their suit within six months of the alleged breach (Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)). Thus, treating this case as one brought under Section 301, the lower courts properly granted summary judgment in Caterpillar's favor.

REASONS FOR DENYING THE WRIT

Section 301 of the Labor-Management Relations Act, and the remedies available pursuant to that section, provide the exclusive source of law for claims, the resolution of which involves a collective bargaining agreement. In Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456 (1957), this Court held that the Congress, through LMRA Section 301, authorized federal courts to create a uniform body of federal common law relating to collective bargaining agreements "which the courts must fashion from the policy of our national labor laws." As further explained in Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962), "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." In order to effectuate this mandate, the Court has established Section 301 as a uniquely broad source of federal common law with a "preemptive force ... so powerful as to displace entirely any state cause of action" within its scope. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987) (quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983)). As a result of this strong federal policy, this Court has made clear, in a long line of cases, that Section 301 of the LMRA preempts a state law claim that is "substantially dependent upon analysis of the terms of an agreement made between parties to a labor contract." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985). See, e.g., United Steel Workers v. Rawson, 495 U.S. 362 (1990); Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988); Caterpillar Inc. v. Williams, 482

U.S. 386 (1987).

In Ryherd v. General Cable Co., 124 Ill. 2d 418, 530 N.E.2d 431 (1988), the Illinois Supreme Court, following this standard, reaffirmed that, regardless of how a plaintiff's claims are couched in the complaint, Illinois courts will consider a state claim to be preempted by Section 301 if "the validity of the state claim is 'inextricably intertwined with consideration of the terms of the labor contract.'" Ryherd, 530 N.E.2d at 434 (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)). Both the trial court and the appellate court accepted and applied this Court's established standard in this case. In reviewing the particular facts of this case under that standard, the lower courts concluded that the resolution of the Petitioners' claims would indeed require analysis and interpretation of the terms of collective bargaining agreements. Accordingly, the courts concluded that Petitioners' claims are preempted under Section 301.

Petitioners contend that the holding of the Illinois Appellate Court creates a conflict with decisions of other courts on the issue of whether Section 301 can preempt a state contract claim based on an agreement alleged to be separate and distinct from the collective bargaining contract. None of the cases cited by Petitioners, however, establish that there is a conflict on the applicable legal principles. Instead, these cases simply come to different conclusions based upon their particular facts.

The basis for the purported conflict is alternatively stated in the Petitioners' submission, as follows:

> This Court is again asked to address the question of whether federal preemption, under § 301(a) of the Labor Management Relations Act, can be found to arise from defenses raised in an employer's pleadings, where the plaintiffs' claims are premised solely upon state law. This question is reflected in opposing views as to the applicability of this Court's opinion in Caterpillar Inc. v. Williams, 482 U.S. 386, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987).

(Pet. for Cert. at 5).

In Williams, this Court held that the question whether a claim is "completely preempted" by Section 301 so as to permit removal of the case to federal court based upon federal question jurisdiction must be determined solely from the face of the complaint and cannot depend upon the anticipated defenses. Petitioners note that the decision below and at least one other appellate court decision -- by the Seventh Circuit -- have so limited the Williams holding. (Pet. for Cert. at 7-8, citing Smith v. Colgate-Palmolive Co., 943 F.2d 764 (7th Cir. 1991)). Petitioners also cite to three appellate court cases purportedly holding that Williams applies not only to the question of "complete preemption" for purposes of removal, but also to preemption on the merits. (Pet. for Cert. at 8, citing Berda v. CBS Inc., 881 F.2d 20 (3d Cir. 1989), cert. denied, 493 U.S. 1062 (1990); Lopez v. Continental Can Co., 961 F.2d 147

(9th Cir. 1992); and White v. National Steel Corp., 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991)). For a number of reasons, however, Petitioners arguments raise no appropriate grounds for a grant of certiorari in this case.

First, the result below does not depend upon whether preemption can be found in the asserted defenses to the claim. Although the appellate court did hold that Respondent's defenses would require interpretation of the collective bargaining agreement, this was not the primary grounds upon which the decision rested. Rather, the court held that an interpretation of the collective bargaining agreement would be required to resolve Petitioners' claims for breach of contract and misrepresentation irrespective of Respondent's affirmative defenses. For example, the court stated that proof of justifiable reliance -- an essential element of Petitioners' misrepresentation claim -- would necessarily require an analysis of the collective bargaining agreement as a part of the surrounding circumstances.

Second, there is no conflict of law in the cases cited by Petitioners. Rather, they simply involve the application of the Allis-Chalmers rule that Section 301 preempts a state law claim which is "substantially dependent upon the analysis of the terms of an agreement made between parties to a labor contract" to different facts. In the Fourth Circuit case cited by Petitioners, White v. National Steel Corp., 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991), the court held that an alleged individual agreement made with regard to a management position which was not subject to the collective bargaining agreement was not, on its facts, sufficiently dependent upon the analysis of the terms of a collective bargaining agreement to meet the Allis-Chalmers standard. Similarly, in the Third Circuit case cited by Plaintiffs, Berda v. CBS, Inc., 881 F.2d 20 (3d Cir.), cert.

denied, 493 U.S. 1062 (1990), the court held that the Allis-Chalmers standard was not met with respect to an individual contract based upon promises made during the hiring interview and which had induced the plaintiff to accept employment prior to the time that he was subject to the collective bargaining agreement. Finally, in the Ninth Circuit case, Lopez v. Continental Can Co., 961 F.2d 147 (9th Cir. 1992), the court simply held that a union employee's statutory claim that her employer fraudulently concealed information about a safety risk was not preempted by Section 301.

In this case, the appellate court applied the same basic standard applied in each of the cases cited by Petitioners. The uncontroverted facts showed that the Plaintiffs were covered by the collective bargaining agreement at the time they entered the apprentice program, when the alleged individual agreements were signed, and at all times thereafter. Moreover, as found by the district court, there is nothing in either the alleged individual agreements or the collective bargaining agreement which excepts the employees in the apprentice program from the downgrade, layoff and recall provisions of the collective bargaining agreement. Thus, the Illinois Appellate Court's conclusion that "in determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined" cannot be contested on the facts and presents a different issue than in White, where the promise pertained to a non-unit position, Berda, where the plaintiff was not subject to a collective bargaining contract at the time the individual agreement was formed, and Lopez, where the Plaintiff brought a statutory claim. In short, the purported conflict is simply an application

of the same rule of law to a different set of facts with a correspondingly different result. Such a conflict does not require or justify Supreme Court review.

Finally, Petitioners argument that this Court has not determined whether a federal labor issue arising out of a defense may preempt a state law claim is simply wrong. In Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985), and other Supreme Court cases cited by Petitioners themselves, this is precisely what occurred. Numerous cases have arisen in the state courts or in the federal courts by virtue of diversity jurisdiction wherein this Court has uniformly recognized that a state law claim may be preempted when a defense requires interpretation of a collective bargaining agreement. Moreover, in Caterpillar Inc. v. Williams, 482 U.S. 386 (1987), this Court expressly recognized that, where a case is not properly removed because a federal question does not appear on the face of the complaint, preemption defenses, including the Section 301 defense, "are questions that must be addressed in the first instance by the state court in which respondents filed their claims." Williams, 482 U.S. at 398, n.13. That is precisely what occurred in this case.

Not one of the Circuit Court cases featured by Petitioners holds that a federal defense may not preempt a state law claim. At most, these cases simply hold that, on the particular facts in the case, the asserted defense is insufficient to invoke federal preemption. Again, therefore, there is no dispute as to the applicable legal principles and no conflict requiring resolution by this Court.

In summary, this case involves nothing more than a straightforward application of both long-standing and recent precedents of this Court. There are no conflicts which require resolution and the case meets none of the other standards necessary to justify the

exercise of this Court's supervisory powers. The Petition should be denied.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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